

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DALLAS H. HULL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,407
<b>MAGILL TRUCK LINES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appeal from a preliminary hearing Order entered by Administrative Law Judge by John D. Clark dated September 10, 1996.

**ISSUES**

Respondent and its insurance carrier requested Appeals Board review of the issues regarding whether notice was timely given and whether the alleged work-related accident and resulting injury arose out of and in the course of claimant's employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the preliminary hearing record and considered the briefs of the parties, the Appeals Board finds for purposes of preliminary hearing, as follows:

The Appeals Board has jurisdiction to review these preliminary hearing issues pursuant to K.S.A. 44-534a, as amended.

Claimant has not established timely notice of accident pursuant to K.S.A. 44-520.

Claimant is a truck driver who worked for respondent approximately ten years. He claims injuries to both shoulders and neck resulting from an accident which occurred on approximately August 6, 1994, and each and every working day thereafter.

According to claimant, his accident happened "when I was strapping down [a load] and I had my hands up over my head . . . my right leg slipped . . . I threwed a big crink or jam in my neck and it bothered me at that time." Claimant called his dispatcher but was advised they did not have anyone else to cover the load so claimant went ahead and drove to Denver. Claimant told the dispatcher that he was hurt but concedes that he did not tell him that his injury was due to a work-related accident. Claimant continued to work for respondent until December 28, 1995, when he quit due to his injury. During this time the employer was aware of claimant's condition and the fact that he was seeking medical treatment for same but at no point during the time claimant was working did he relate his condition to a work-related accident either to his employer or to the treating physicians. It was not until sometime in January 1996, after claimant had terminated his employment with respondent, that he first provided such notice. Respondent's Exhibit 6 to the preliminary hearing transcript, which was introduced without objection, is a Form A, Employer's Report of Accident, which claimant filled out and delivered to his employer. Unfortunately, it was not dated by claimant. The evidence is that respondent received the report of accident from claimant in mid- or late January, 1996, more than ten days after claimant's last day of work and 17 months from the August 8, 1994, date of injury alleged by claimant on the accident report form.

K.S.A. 44-520 provides:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Claimant alleges his initial accident occurred sometime between August 1, 1994, and August 8, 1994. The Appeals Board finds that the first notice claimant gave to respondent that he was alleging his injury to be work related was the Employer's Report of Accident form he completed in January 1996. Accordingly, claimant failed to give notice within ten days of the initial accident and, from the record as it currently exists, failed to give notice within ten days of his last day worked. Although there is some testimony to the effect that claimant failed to report his accident and did not seek medical treatment from his employer under workers compensation because he thought he would get better and because he was not clear about his responsibility to timely report accidents, claimant does not argue, either at preliminary hearing or in his brief, that there was just cause for his failure to give notice within ten days. Since "just cause" is not alleged, we do not need to address it herein. Also, we do not reach the second issue concerning whether claimant's injury arose out of and in the course of his employment with respondent. The Appeals Board finds claimant failed to give timely notice of accident as required by K.S.A. 44-520. Accordingly, the Order of the Administrative Law Judge should be reversed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order by Administrative Law Judge John D. Clark dated September 10, 1996, should be, and the same hereby is, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1996.

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
William L. Townsley III, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director